

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 1, SUBREGION 34**

**FRESHBEV CRAFT JUICERY, LLC**

**Employer**

**and**

**Case 01-RC-179057**

**UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 371**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION<sup>1</sup>**

The Employer, FreshBev Craft Juicery, LLC (Freshbev) is a Connecticut corporation, with an office and place of business in New Haven, Connecticut, where it operates as a beverage producer and distributor. The Petitioner, United Food and Commercial Workers International Union, Local 371 (Union), seeks to represent a bargaining unit comprised of all full-time and regular part-time production, maintenance, packaging, warehouse shipping/logistics, HPP, and sanitation employees of the Employer, excluding drivers, office clericals and guards, and professional employees and supervisors as defined by the Act.

The Employer asserts that the showing of interest submitted by the Petitioner in June 2016<sup>2</sup>, is stale and the Petitioner must submit a fresh showing of interest before an election is conducted. The parties raised no other issues.

The Board, with court approval, has long held that the showing of interest is a matter for administrative determination and is not litigable by the parties. See, e.g., *O. D. Jennings & Co.*, 68 NLRB 516; 518 (1946); *Super Valu, Inc.*, 181 NLRB 698, 698-699 (1970). Accord *NLRB v. Metro-Truck Body, Inc.*, 613 F.2d 746, 750 (9th Cir. 1979). The Region made an administrative determination when the petition was filed that the showing of interest was sufficient, and the Board's policies and procedures do not mandate a fresh showing once the initial requirement is satisfied, even if the processing of the petition is delayed.<sup>3</sup>

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<sup>1</sup> The petition in this case was filed under Section 9(c) of the Act. The parties were provided opportunity to present evidence on the issues raised by the petition at a hearing held before a hearing officer of the National Labor Relations Board (the Board). I have the authority to hear and decide this matter on behalf of the Board under Section 3(b) of the Act. I find that the hearing officer's rulings are free from prejudicial error and are affirmed; that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction; that the Petitioner is a labor organization within the meaning of the Act; and that a question affecting commerce exists concerning the representation of certain employees of the Employer.

<sup>2</sup> The processing of this petition was held in abeyance pursuant to the Board's blocking charge policy and was resumed upon the Employer's compliance with a settlement agreement.

<sup>3</sup> See, e.g., *Cablevision Systems Corp.*, 367 NLRB No.59 (2018) (petition filed on October 16, 2014, reinstated for processing on December 19, 2018; petitioner not required to submit a fresh showing of interest).

Accordingly, I am directing an election in this matter and I conclude that the following employees of the Employer constitute a voting unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time production, maintenance, packaging, warehouse shipping/logistics, HPP, and sanitation employees employed by the Employer at its New Haven, Connecticut facility.

Excluded: All, drivers, office clerical employees and guards, and professional employees and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers Union, Local 371.

#### **A. Election Details**

The election will be held on Thursday, September 26, 2019 from 1:00 PM to 2:30 PM in the employee break room at the Employer's facility located at 26 Kendall Street, New Haven, CT 06512.

#### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending August 16, 2019, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, August 27, 2019**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those

employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: August 23, 2019



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Paul J. Murphy, Acting Regional Director  
National Labor Relations Board  
Region 01, Subregion 34

Enclosure